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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 337

PRIME SECURITIES CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

No. 338

MICHIGAN SILICA COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

No. 339

GENERAL CHROMIUM CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

No. 340

SENIOR INVESTMENT CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

No. 341

UDYLITE COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

No. 342

STANDARD COTTON PRODUCTS COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The District Court for the Eastern District of Michigan did not file an opinion. The opinion of the Circuit Court of Appeals for the Sixth Circuit (R. 4–8 at end) is reported in 119 F. (2d) 939.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered on May 15, 1941 (R. 1–4 at end). The petition for writs of certiorari was filed August 4, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the capital stock tax provisions of the National Industrial Recovery Act and of the Revenue Act of 1934 are unconstitutional.

STATUTES INVOLVED

These will be found in the Appendix, *infra*, pp. 6–11.

STATEMENT

Each of these cases is for the recovery of capital stock taxes paid by the respective taxpayers for the taxable years ended June 30, 1933, and June 30, 1934. In each case, timely claims for refunds were filed and, upon rejection thereof by the Commissioner, timely actions were commenced (R. 1, 6–18). The United States filed motions to dismiss each petition (R. 19). These motions were sustained by the district court (R. 25) and its judgments were affirmed by the court below (R. 1–4 at end).

The material facts in each case, as set forth in the amended petitions, are that the taxpayer is a domestic corporation which filed capital stock tax returns for the taxable years ended June 30, 1933, and June 30, 1934, that the adjusted values which the taxpayer declared for its capital stock in various years varied widely, and that there were wide fluctuations in the taxpayers' net worth in various years (R. 21–22).

The petition in each case alleged that the taxpayer, in arriving at the value to be declared for its capital stock, was forced to guess the future

trend of its earnings in order to avoid future excess profits taxes and was forced to ignore any previously known standards of value (R. 3); that the taxing statutes are so unreasonable, arbitrary, capricious and discriminatory as to violate the due process clause of the Fifth Amendment to the Constitution (R. 8–9); and that the taxing statutes are unconstitutional as imposing direct taxes without apportionment (R. 9).

ARGUMENT

This Court has denied five similar petitions for writs of certiorari: *Allied Agents, Inc.* v. *United States,* 26 F. Supp. 98 (C. Cls.), certiorari denied, 308 U. S. 561; *Tennessee Consolidated Coal Co.* v. *United States,* 89 C. Cls. 542, certiorari denied, 310 U. S. 649; *Chicago Telephone Supply Co.* v. *United States,* 23 F. Supp. 471 (C. Cls.), certiorari denied, 305 U. S. 628; *General Motors Corp.* v. *United States,* 35 F. Supp. 466 (C. Cls.), certiorari denied March 31, 1941, No. 738, October Term, 1940; *United Motors Service, Inc.* v. *United States,* 35 F. Supp. 466 (C. Cls.), certiorari denied March 31, 1941, No. 739, October Term, 1940. In addition to these cases, the capital stock tax provisions have been upheld in *Rochester Gas & Electric Corp.* v. *McGowan,* 115 F. (2d) 953 (C. C. A. 2); *American Viscose Corp.* v. *Rothensies* (C. C. A. 3), decided June 6, 1941, not yet officially reported but found in 1941 C. C. H., Vol. 4, par. 9516; and *Utah Oil Refining Co.* v. *Hinckley* (C. C. A. 10), decided June 25, 1941, not yet officially reported but found in 1941 C. C. H., Vol. 4, par.

9573.[1] Cf. *Briggs-Darby Const. Co.* v. *Commissioner*, 119 F. (2d) 89 (C. C. A. 5), holding the related excess-profits tax to be constitutional. Decisions of the district courts and of the Board of Tax Appeals, which are collected in the opinion of the court below (R. 5 at end), are uniformly to the same effect. There is no decision to the contrary.

CONCLUSION

The decision below is correct and accords with the uniform course of authority. There is no conflict. No reason of substance is advanced for granting the writs in these cases that has not already been urged in other similar cases in which petitions for certiorari have been denied. The petition in this case should likewise be denied.

Respectfully submitted.

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AUGUST 1941.

[1] The only similar cases now pending in a circuit court of appeals are four in the seventh circuit. These cases have not yet been submitted, extensions of time for filing briefs therein having been granted at the request of the taxpayers' counsel, of whom counsel for the present petitioners is a member.